

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12370 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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**GUJARAT STATE CO OP AGRI. & RURAL DEVP.BANK LTD -
Petitioner(s)**

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MS LILU K BHAYA for Petitioner(s) : 1, MR AV TRIVEDI for Petitioner(s)
: 2,

NOTICE SERVED for Respondent(s) : 1,

MR RK MISHRA for Respondent(s) : 2,

Mr.Dipen Desai, AGP for State

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 26/12/2006

ORAL JUDGMENT

1.The short facts of the case are that as per the

petitioner, Respondent No.2 had obtained a loan on 14.8.1974 and as per the petitioner, since the loan amount was not paid, the loan remained outstanding. Ultimately, the recovery certificates were issued and on 30.1.1993, the auction was held of the land, which was mortgaged with the petitioner. The pertinent aspect is that at the auction, since no buyer came forward, on behalf of the Government, Talati submitted the offer for Rs.53,379/- and the offer was accepted by the Special Recovery Officer. Thereafter, on 8.11.1993, the sale certificate came to be issued. It appears that respondent No.2 preferred revision before the State Government under Section 211 of the Bombay Land Revenue Code against the aforesaid auction of the Special Recovery Officer. In the revision, the State Government found that there was no proper fixation of the upset price and, therefore, there was no proper realisation of the money of the auction and hence, the State Government partly allowed the revision and directed that a fresh procedure be undertaken

for recovery of the amount from the property. It is under these circumstances, the petitioner has approached this Court by preferring the present petition.

2. I have heard Ms. Bhaya, learned Counsel for the petitioner, Mr. Desai, learned AGFP for the respondent State Government and Mr. Mishra, learned Counsel with Ms. Shukhla for respondent No. 2, including the legal heirs, who were permitted to be brought on record pursuant to the order passed by this Court today in Civil Application No. 14893 of 2006 in SCA No. 12370 of 1994.

3. Upon hearing the learned Counsel for both the sides and from the record, which is produced by respondent No. 2 with the Civil Application No. 14893 of 2006 in Special Civil Application No. 12370 of 1994, it appears that this Court (Coram: A.N. Divecha, J.) on 27.10.1994, while admitting the main Special Civil Application, had the following order:

“Rule to be heard with Special Civil Application No. 9320 of 1994. Ad-interim

relief in terms of para 9(B) and (c) are granted."

4. Consequently, the operation and the implementation of the order of the State Government in revisional jurisdiction came to be stayed and the State Government was directed not to recover the amount of purchase price from the petitioner received on confirmation of the auction sale in question. It further appears that thereafter pending the Special Civil Application on November 20, 1998, the Mamlatdar has intimated to Respondent No.2 that at the auction, since the State Government had deposited the amount of Rs.53,379/-, the land was credited as that of the Government, but if respondent No.2 was desirous to get back the land, the amount of auction with interest, if paid, the application could be considered for such purpose. It appears that thereafter on 29.10.1999 respondent No.2 has deposited the amount of Rs.53,379/- towards the principal plus interest of Rs.5,872/- total Rs.59,251/- and thereafter based on the payment made, the

application was made by respondent No.2 to the Mamlatdar on 29.10.1999 and ultimately on 24.5.2004, as the amount which was deposited by the State Government is paid to the State Government with interest, the land is ordered to be returned to Respondent No.2. The copy of the order dated 24.5.2004 is also produced in the record of Civil Application No.14893 of 2006 and any dispute pertaining that to is not brought to the notice of this Court.

5. Under these circumstances, it appears that when the land is already returned by the Government to Respondent No.2, who was originally the holder of the land, on the premise that the sale certificate operates and the auction is maintained, no useful purpose would be served in deciding the questions, which are raised in this petition. In any event, pending the main Special Civil Application, the order of the State Government in revisional jurisdiction is not given effect, since the order was, in any case, stayed by this Court. Further as observed above, the land is returned back to respondent

No.2, who was the original holder of the land and who preferred the revision before the State Government, the grievance of respondent No.2, who was revisioning petitioner before the State Government would also not survive.

6. Under the above circumstances, I find that the petition has become infructuous by afflux of time and in view of the circumstances that the land is subsequently returned by the State Government to Respondent No.2.

7. Hence, disposed of accordingly. Subject to the aforesaid observations, Rule discharged. No order as to costs. It is made clear that any observations made in the present order shall not operate as a bar to the petitioner Bank in recovering the amount against the defaulter concerned, if any, as may be permissible in law and if such an action is taken, all rights and contentions of such person concerned shall also remain open.

26.12.2006

(Jayant Patel, J.)

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